

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEW YUEN FAT GARMENTS FACTORY LIMITED, Case No.: 07 CIV 8304

Plaintiff,

-against-

AUGUST SILK, INC., and DIRECT APPAREL
SOURCING, INC.,

Defendants.

**RESPONSE TO AUGUST SILK,
INC.'S COUNTERCLAIMS
AND AFFIRMATIVE
DEFENSES**

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Plaintiff NEW YUEN FAT GARMENTS LIMITED, by and through its
undersigned attorneys, as and for its Response to, defendant AUGUST SILK, INC.'s
Counterclaims, alleges and pleads affirmative defenses to same as follows:

**AS AND FOR PLAINTIFF'S RESPONSE TO AUGUST SILK, INC.'S
FIRST COUNTERCLAIM**

1. Plaintiff denies knowledge and information sufficient upon which to form a belief as to the allegations contained in paragraph "151" of August Silk, Inc.'s ("August") First Counterclaim.
2. Plaintiff admits the allegations contained in paragraph "152" of August's First Counterclaim.
3. Plaintiff admits the allegations contained in paragraph "153" of August's First Counterclaim, but lacks information sufficient to form a belief as to whether the defendant's sole engagement in business is limited to selling apparel to retailers.
4. Plaintiff admits the allegations contained in paragraph "154" of August's First Counterclaim, to the extent that a portion of plaintiff's business is manufacturing apparel.

5. Plaintiff denies knowledge and information sufficient upon which to form a belief as to the allegations contained in paragraph "155" of August's First Counterclaim.

6. Plaintiff denies knowledge and information sufficient upon which to form a belief as to the allegations contained in paragraph "156" of August's First Counterclaim.

7. Denies the allegations contained in paragraph "157" of August's First Counterclaim.

8. Denies the allegations contained in paragraph "158" of August's First Counterclaim.

9. Denies the allegations contained in paragraph "159" of August's First Counterclaim.

10. Denies the allegations contained in paragraph "160" of August's First Counterclaim.

11. Denies the allegations contained in paragraph "161" of August's First Counterclaim, and refers questions of law to the Court for determination.

**AS AND FOR PLAINTIFF'S RESPONSE TO AUGUST SILK, INC.'S
SECOND COUNTERCLAIM**

12. Plaintiff repeats and realleges each and every prior allegation in paragraphs "1" through "11" hereof as if set forth at length herein.

13. Denies the allegations contained in paragraph "163" of August's Second Counterclaim.

14. Denies the allegations contained in paragraph "164" of August's Second Counterclaim, and refers questions of law to the Court for determination.

15. Denies the allegations contained in paragraph "165" of August's Second Counterclaim.

16. Denies the allegations contained in paragraph "166" of August's Second Counterclaim, except admits that plaintiff received some payment.

17. Denies the allegations contained in paragraph "167" of August's Second Counterclaim.

18. Denies knowledge and information sufficient to form a basis of belief as to the allegations contained in paragraph "168" of August's Second Counterclaim.

19. Denies the allegations contained in paragraph "169" of August's Second Counterclaim.

20. Denies the allegations contained in paragraph "170" of August's Second Counterclaim.

21. Denies the allegations contained in paragraph "171" of August's Second Counterclaim.

22. Denies the allegations contained in paragraph "172" of August's Second Counterclaim.

**AS AND FOR PLAINTIFF'S RESPONSE TO AUGUST SILK, INC.'S
THIRD COUNTERCLAIM**

23. Plaintiff repeats and realleges each and every prior allegation in paragraphs "1" through "22" hereof as if set forth at length herein.

24. Denies the allegations contained in paragraph "174" of August's Third Counterclaim.

25. Denies the allegations contained in paragraph "175" of August's Third Counterclaim.

**AS AND FOR PLAINTIFF'S FIRST AFFIRMATIVE DEFENSE TO AUGUST
SILK INC.'S COUNTERCLAIMS**

1. Defendant August Silk, Inc.'s ("August") counterclaims are barred by the doctrine of waiver.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE TO AUGUST'S
COUNTERCLAIMS**

2. August's counterclaims are barred by the doctrine of estoppel.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE TO AUGUST'S
COUNTERCLAIMS**

3. August's counterclaims are barred by the doctrine of laches.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE TO AUGUST'S
COUNTERCLAIMS**

4. August's counterclaims are barred by accord and satisfaction.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE TO AUGUST'S
COUNTERCLAIMS**

5. August's counterclaims are barred by the statute of frauds.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE TO AUGUST'S
COUNTERCLAIMS**

6. August's counterclaims fail to state a claim upon which relief can be granted.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE TO AUGUST'S
COUNTERCLAIMS**

7. August's counterclaims are barred by documentary evidence.

**AS AND FOR A EIGHTH AFFIRMATIVE DEFENSE TO AUGUST'S
COUNTERCLAIMS**

8. August's counterclaims are barred by statute of limitations.

WHEREFORE PLAINTIFF NEW YUEN FAT GARMENTS

LIMITED, respectfully requests that judgment be entered dismissing defendant August Silk, Inc.'s counterclaims, and granting such further relief that this Court deems just and proper.

Dated: November 16, 2007
New York, New York

Yuen Roccanova Seltzer & Sverd LLP

By: 

Peter E. Sverd (6754)

Attorneys for plaintiff New Yuen Fat
Garments Limited

132 Nassau Street, Suite 1300

New York, New York 10038

(212) 608-1178

To: Lazarus & Lazarus, P.C.
Attn: Harlan M. Lazarus
240 Madison Avenue, 8th Floor
New York, New York 10016
(212) 889-7400

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NEW YUEN FAT GARMENTS FACTORY LIMITED,

Case No.: 07 CIV 8304

Plaintiff,

**Affidavit of
Service**

-against-

AUGUST SILK, INC., and DIRECT APPAREL
SOURCING, INC.,

Defendants.
-----X

STATE OF NEW YORK:

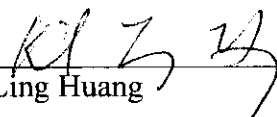
ss:

COUNTY OF NEW YORK:

I, Kit Ling Huang, being sworn, say:

1. I am not a party to the action, am over 18 years of age and reside in Kings County, State of New York.
2. On November 16th, 2007 I served the within Response to August Silk, Inc.'s Counterclaims and Affirmative Defenses by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to the following person(s):


- 1) Lazarus & Lazarus, P.C.
Attn: Harlan M. Lazarus
240 Madison Avenue, 8th Floor
New York, New York 10016



Kit Ling Huang

Duly sworn to before me
this 16 day of November 2007.



PETER E. SVERD
Notary Public, State of New York
No. 02SV6108393
Qualified in Suffolk County
Commission Expires April 19, 2008 

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEW YUEN FAT GARMENTS FACTORY LIMITED,

CASE NO.: 07 CIV 8304

Plaintiff,

- against -

ECF CASE

AUGUST SILK, INC., and DIRECT APPAREL
SOURCING, INC.,

Defendants.

**RESPONSE TO AUGUST SILK, INC.'S COUNTERCLAIMS AND AFFIRMATIVE
DEFENSES**

Attorneys for Plaintiff
YUEN ROCCANOVA SELTZER & SVERD LLP
132 Nassau Street, Suite 1300
New York, NY 10038
(212) 608-1178

To:

Service of a copy of the within
is hereby admitted.

Signature (Rule 130-1.1-a)

Dated: _____, ____



Peter E. Sverd, Esq.

PLEASE TAKE NOTICE:

☐ NOTICE OF ENTRY

that the within is a (certified) true copy of a
duly entered in the office of the clerk of the within named court on

20__

☐ NOTICE OF SETTLEMENT

that an order
will be presented for settlement to
within named Court, at
on 20__ at AM.

of which the within is a true copy
one of the judges of the

Dated:

Yours, etc.

YUEN ROCCANOVA SELTZER & SVERD LLP